

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF PARADISE VALLEY

THIS AGREEMENT is entered into April 15 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE TOWN OF PARADISE VALLEY acting by and through its MAYOR and TOWN COUNCIL (the "Town").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of the Town has been selected by the Town and has been submitted to the Federal Highway Administration ("FHWA") for its approval.

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The Town, in order to obtain federal funds for the design of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town and FHWA.

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NO. 26773  
Filed with the Secretary of State  
Date Filed: 04/15/04

Janice K. Brewer  
Secretary of State

By: Tim D. Baernewald

7. The work embraced in this agreement is the design of new sidewalk on the south side of Lincoln Drive – 32<sup>nd</sup> Street to Invergordon Road at an estimated cost of:

|   |                             |
|---|-----------------------------|
| Estimated Subtotal Design Cost                                | \$ 120,000.00               |
| Estimated 5% Contingency ADOT PE Cost*                        | \$ 5,000.00                 |
| <b><i>Estimated Subtotal Design Cost</i></b>                  | <b><i>\$ 125,000.00</i></b> |
| Estimated Federal-aid funds @ 94.7% of \$ 105,597.00 (capped) | \$ 100,000.00               |
| Estimated City Funds @ 5.7%                                   | \$ 6,045.00                 |
| Estimated Total Estimated City Funds                          | \$ 18,955.00                |
| <b><i>Total Estimated City Funds</i></b>                      | <b><i>\$ 25,000.00</i></b>  |

\*A \$5,000.00 ADOT PE Cost is added per Local Government Engineer Memo of April 4, 1994.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State:**

a. Hereby agrees to be authorized agent for the Town, and with the aid and consent of the Town and the FHWA, and all at Town's expense, to perform certain work and prepare certain documents required by the FHWA to qualify certain, highway, bridge and railroad grade crossing projects for and to receive Federal funds. Such work may consist of, but is not specifically limited to: the review and approval of the Town prepared environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports; design plans; maps; specifications; geologic materials testing; and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the Town, and at no cost to the State); and such other related tasks essential to the achievement of the objectives of this agreement.

b. Reimburse the Town with federal funds for design work addressed under this agreement at 94.3% of the project cost, capped at \$100,000.00.

c. Should some unforeseen conditions or circumstances increase the cost of said work required, by a change in the extent or scope of the work called for in this agreement, shall not be obligated to incur any expenditure in the project.

### **2. The Town:**

a. Agrees to the cost of the analysis and design work covered by this agreement is to be borne by FHWA and the Town, each in the proportion prescribed and determined by FHWA.

b. Agrees to deposit funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

c. Agrees to provide any required preliminary engineering and planning studies, the environmental analysis and design of the project. As required by the FHWA, the State will provide design review of the project plans, studies and related documents. And when appropriate provide comments which will be incorporated into the design documents.

d. If such project is approved for construction by FHWA and the funds are available for construction, will and does hereby designate the State as authorized agent for the Town.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid. Any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town. The Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual unless assumed by another entity.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007

Town of Paradise Valley  
Bob Ciccarelli  
6401 E. Lincoln Dr.  
Paradise Valley, AZ 85253-4399

8. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State and Town under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and Town at the end of the period for which the funds are available. No liability shall accrue to the State and Town in the event this provision is exercised, and the State and Town shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**TOWN OF PARADISE VALLEY**


**STATE OF ARIZONA**

Department of Transportation

By   
EDWARD LOWRY  
Mayor

By   
DALE BUSKIRK, Division Director  
Transportation Planning Division


ATTEST:

By   
LENORE LANCASTER  
Town Clerk

APPROVAL OF THE TOWN OF PARADISE VALLEY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and TOWN OF PARADISE VALLEY and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

  
\_\_\_\_\_  
Town  
City Attorney

1  
2 When recorded, return to:

3  
4 Paradise Valley Town Attorney  
5 6401 East Lincoln Drive  
6 Paradise Valley, Arizona 85253  
7  
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10 **RESOLUTION NUMBER 1066**

11 **A RESOLUTION OF THE TOWN OF PARADISE VALLEY,**  
12 **ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL**  
13 **AGREEMENT WITH THE STATE OF ARIZONA**  
14 **DEPARTMENT OF TRANSPORTATION FOR THE**  
15 **PURPOSE OF ACQUIRING FEDERAL FUNDING FROM**  
16 **THE FEDERAL HIGHWAY ADMINISTRATION AND**  
17 **DEFINING RESPONSIBILITIES FOR THE ENGINEERING**  
18 **DESIGN FOR THE LINCOLN DRIVE SIDEWALK**  
19 **IMPROVEMENTS**  
20  
21

22 Section 1. WHEREAS, Arizona Revised Statutes, Section 11-951 et seq., provides that  
23 public agencies, including cities and towns, may enter into intergovernmental agreements for  
24 joint or cooperative action; and

25 WHEREAS, congress has authorized appropriations for, but not limited to, the  
26 construction of streets; and

27 WHEREAS, the engineering design for the Lincoln Drive Sidewalk Improvement Project  
28 (“Project”) is eligible for such funds and has been submitted to the Federal Highway  
29 Administration for approval and acquisition of such funds; and

30 WHEREAS, the engineering design costs of the Project are estimated to be up to  
31 \$125,000.00; and

32 WHEREAS, The Town will pay an estimated 4.2% contingency deposit of \$5,000.00 to  
33 the Arizona Department of Transportation for professional engineering and administrative costs;  
34 and

35 WHEREAS, by entering into an intergovernmental agreement (the “IGA”, a copy of which  
36 is attached to this Resolution as Exhibit A and incorporated herein by reference) with the State of

1 Arizona, the State will apply available federal funds for the engineering design of the Project at  
2 the rate of 94.3% of the cost to design the Project, up to a maximum total engineering design cost  
3 of \$106,045.00, said federal funding estimated to be \$100,000.00 based upon the current  
4 engineering design cost estimate; and

5 WHEREAS, The State of Arizona Department of Transportation is authorized to be the  
6 administrator for the Federal Highway Administration and will enter into a Project Agreement  
7 with the Federal Highway Administration covering work on the Project and the coordination of  
8 the federal funds; and


9 WHEREAS, the total amount of Town funds expended to complete the engineering design  
10 for the Project is estimated to be no more than \$25,000.00.

11 NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Paradise  
12 Valley, that:


13 1. The Paradise Valley Town Council hereby authorizes the Town Manager to execute  
14 the IGA with the State of Arizona Department of Transportation.

15 2. The Town Manager is authorized to transfer \$5,000.00 to the State of Arizona  
16 Department of Transportation at the time and pursuant to the requirements stated in the IGA.

17 PASSED AND ADOPTED by the Mayor and Council of the Town of Paradise Valley,  
18 Arizona, this 11<sup>th</sup> day of March, 2004.

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Edward Lowry, Mayor

ATTEST:

  
Lenore P. Lancaster, Town Clerk


1  
2 APPROVED AS TO FORM  
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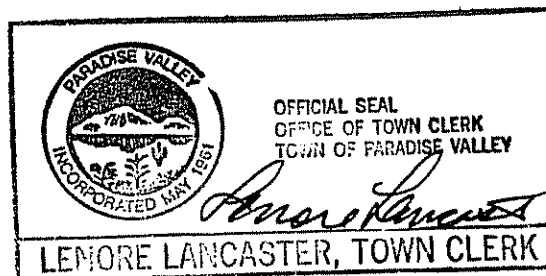
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6  
7 Andrew M. Miller, Town Attorney  
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10 **CERTIFICATION**

11 I, Lenore P. Lancaster, Town Clerk hereby certify that the foregoing is a full, true and  
12 correct copy of Resolution Number 1066 duly and regularly passed and adopted by vote of the  
13 Town Council of Paradise Valley at a meeting thereof duly called and held on the 11<sup>th</sup> day of  
14 March, 2004. That the Resolution appears in the minutes of the meeting, and that the same has  
15 not been rescinded or modified and is now in full force and effect.

16 I further certify that the municipal corporation is duly organized and existing, and has the  
17 power to take the action called for by the foregoing Resolution.  
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21   
Lenore P. Lancaster, Town Clerk







OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD  
ATTORNEY GENERAL

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0177TRN (**JPA 03-095**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 8, 2004.

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED/mjf  
Attachment  
838786